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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 650

L. W. BALDWIN AND GUY A. THOMPSON, AS TRUSTEES OF MISSOURI PACIFIC RAILROAD COMPANY, A CORPORATION,
Petitioners,

vs.

SCOTT COUNTY MILLING COMPANY, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI AND BRIEF IN SUPPORT THEREOF.

THOMAS J. COLE,
RUSSELL L. DEARMONT,
H. H. LARIMORE,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Your petitioners, L. W. Baldwin and Guy A. Thompson, as trustees in charge of and operating the properties of Missouri Pacific Railroad Company, respectfully present to this Honorable Court this their petition for a writ of certiorari, to be directed to the Sup. eme Court of Missouri, commanding said court and the clerk thereof to certify to this Court a transcript of the record and proceedings in this cause in said court wherein your petitioners were appellants and the respondent here was respondent in said court, together with the opinion of said court, for review and determination of said cause by this Court.

Your petitioners present herewith a certified copy of the record in the said Supreme Court of Missouri.

Summary Statement of the Matter Involved.

On or about September 15, 1924, the respondent and others filed a complaint with the Interstate Commerce Commission against the Missouri Pacific Railroad Company and other carriers alleging that the rates charged by such carriers on bituminous coal, carload, from points in southern Illinois and western Kentucky to points in southeastern Missouri and northeast Arkansas were unreasonable for the past, present and the future. That complaint was styled *Scott County Milling Company et al.* v. *Butler County Railroad Company et al.*, Docket No. 16,323.

Following two hearings of said case before the Commission, that body on February 11, 1929, and March 11, 1929, by order and supplemental order, respectively, entered pursuant to the provisions of section 16 of the Interstate Commerce Act (Title 49, Sec. 16, U. S. Code), directed the Missouri Pacific Railroad Company and other carriers to pay to the respondent on or before a day named in such orders the sums to which the Commission found the respondent was entitled.

The order of the Commission directing the carriers to pay to the complainant the sums to which it found the complainant was entitled was based upon a report and finding of the Commission that complainant was entitled to an award of damages because of having been forced to pay rates found by the Commission to have been unreasonable when assessed by the carriers.

Pursuant to the orders of the Commission dated February 11, and March 11, 1929, and to the demand of the respondent, the Missouri Pacific Railroad Company at various dates between April 4 and April 19, inclusive, 1929, as de-

livering carrier, paid to the respondent in settlement of such award of damages the sum of $23,994.33.

On the 25th day of April, 1929, the Missouri Pacific Railroad Company and other carriers filed with the Commission in said case No. 16,323, a motion for rehearing and for reconsideration, which motion was denied on June 10, 1929.

On November 2, 1931, on supplemental petition of carriers and on the record as made, the Commission reopened its case No. 16,323, and after further hearing, on July 3, 1933, entered further orders which, among other things, directed that the orders theretofore entered in said cause, including the orders entered July 12, 1926, July 10, 1928, February 11, 1929, and March 11, 1929, and all other orders theretofore entered, be set aside, vacated and annulled.

Whereupon, on the 30th day of October, 1934, the petitioners demanded of respondent the payment of the said sum of $23,994.33 theretofore paid to it by the Missouri Pacific Railroad Company and payment thereof by the said respondent was refused.

Suit was instituted by petitioners against respondent in the Circuit Court of Scott County, Missouri, to recover the amount paid as aforesaid. The case was tried upon an agreed statement of facts (R. 22) and the finding and judgment was for respondent on the ground, among others, that the payments made by the Missouri Pacific Railroad Company to the respondent were voluntary payments and made with full knowledge of all facts.

Petitioners duly appealed to the Supreme Court of Missouri and that court affirmed the judgment of the lower court and, by opinion filed, held that the payment of the award of damages, pursuant to the orders of the Commission under section 16 of the Interstate Commerce Act, was voluntary, made with full knowledge of all of the facts and could not be recovered. The Supreme Court of Missouri

also held in such opinion that the payment in question found by such court to be voluntary was a holding out to respondent that the litigation was ended and induced respondent to change its position so that it could not now be placed *in statu quo*.

Petitioners contended in the trial court and in the Supreme Court of Missouri that the money sued for was paid pursuant to reports and orders of the Interstate Commerce Commission and that upon the setting aside by the Commission of such reports and orders, petitioners were entitled to recover from respondent the amount so paid, this on the grounds that the payments to respondent were involuntary and were made under a mutual mistake of fact and that it would be inequitable to permit respondent to retain the sums so paid.

Reasons Relied on for the Allowance of the Writ.

1. The Supreme Court of Missouri held that the payment of the award of reparation in question to respondent pursuant to orders of the Commission entered in accordance with the provisions of section 16 of the Act (U. S. Code, Title 49, Sec. 16), without suit having been brought by respondent to enforce such orders of the Commission, was voluntary and could not be recovered though such orders had thereafter been set aside by the Commission.

2. The Supreme Court of Missouri held, in construing said section 16 of the Act, that the carrier should have refused to have paid the award entered by the Commission and awaited a suit by the shipper in which suit it could have invoked every defense which the law afforded it, and that the payment of the award before filing motion for rehearing with the Commission and without suit having been brought thereon was a voluntary payment and could not be re-

covered although such orders of the Commission had thereafter been set aside by that body.

3. The Supreme Court of Missouri also held that payment of the award in question without waiting for suit to be brought thereon was not a payment made under a mistake of fact, but was a payment voluntarily made with a full knowledge of all of the facts and could not be recovered by petitioners though the award in question had been set aside by the Commission.

4. The Supreme Court of Missouri held that since in its opinion the payment of the award in question was voluntary, such payment caused respondent to believe that the matter was a closed transaction and that it would be inequitable to require respondent to refund the amount so paid even though the Commission had set aside the award of reparation in question and all orders requiring the payment thereof because the respondent could not now be placed *in statu quo*.

The foregoing holdings of the Supreme Court of Missouri numbered 1, 2, 3 and 4, raise federal questions which have not heretofore been decided by this Court and involve a construction of said section 16 of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 16).

Petitioners contend that the payment of the award of damages in question, pursuant to the orders of the Interstate Commerce Commission entered in accordance with the provisions of said section 16 of the Interstate Commerce Act, under a correct construction of that Act was involuntary and that since the said orders of the Commission have been vacated and set aside, can be recovered back.

Petitioners also contend that under a proper construction of said section 16 of the Act, payment of an award of repara-

tion which is thereafter set aside and vacated by the Commission, is a payment under a mistake of fact.

Finally, petitioners contend that since payment of an award of reparation entered by the Commission in accordance with the provisions of said Section 16 of the Act is not voluntary, a correct construction of said Section 16 is that it would not be inequitable to permit such payment to be recovered if such an award of damages is set aside and vacated by the Commission.

WHEREFORE your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Supreme Court of Missouri, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 35,278, L. W. Baldwin and Guy A. Thompson, as Trustees of the Missouri Pacific Railroad Company, a Corporation, plaintiffs-appellants, *vs.* Scott County Milling Company, a Corporation, defendant-respondent; that the said judgment of the Supreme Court of Missouri may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

THOMAS J. COLE,
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Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

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vs.

SCOTT COUNTY MILLING COMPANY, A CORPORATION.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of Missouri has not yet been officially reported, but appears at page 101 of the record.

Jurisdiction.

1. The judgment sought to be reviewed is a final judgment which has been rendered by the Supreme Court of Missouri (Division No. 1), the highest court of that State in which a decision of the controversy could be had.

2. The date of the judgment to be reviewed is September 17, 1938 (R. 101).

3. Motion by petitioners for a rehearing was filed in the Supreme Court of Missouri pursuant to the provisions of Rule 21 of that court, which motion for rehearing was by such court fully considered and overruled on the 19th day of November, 1938 (R. 122).

4. In accordance with the provisions of Section 4, Article VII, of the Constitution of Missouri, providing that when a Federal question is involved, the cause on the application of losing party shall be transferred to the Court *en banc,* and also in accordance with the provisions of Rule 24 of the Supreme Court of Missouri, petitioners filed motion to transfer cause to Court *en banc,* which motion the Court fully considered and overruled on the 20th day of December, 1938 (R. 126).

5. The specific claim advanced by petitioners in the lower court, decided adversely to them, and which is relied upon as a basis of this Court's jurisdiction was that the money sued for was paid pursuant to the orders of the Interstate Commerce Commission based upon an award of damages entered by that body and that since such an award of damages and orders based thereon had been set aside, petitioners were entitled to recover back the amount so paid.

Under the construction placed upon Section 16 of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 16) by the Supreme Court of Missouri, such payments made as aforesaid could not be recovered back even though the orders of the Commission requiring such payments to be made had been set aside by that body, this because of a holding by such court that such payments, suit not having been brought to enforce the award of damages or orders of the Commission, were voluntary, made with the full knowledge of the facts and could not be recovered.

The holding by the Supreme Court of Missouri that money paid pursuant to an order of the Interstate Commerce Com-

mission entered under the provisions of said Section 16 of the Interstate Commerce Act may not be recovered back though such orders had been set aside by the Commission is an erroneous construction of a Federal statute and a denial to petitioners of a right or immunity which petitioners have under the laws of the United States and especially said Section 16 of the Interstate Commerce Act.

It is the contention of petitioners that payments of awards of reparation pursuant to orders of the Interstate Commerce Commission entered in accordance with the provisions of said Section 16 are involuntary, notwithstanding suits have not been brought to enforce such orders, and that amounts so paid may be recovered back if the Commission thereafter sets aside such findings and orders, and that said Section 16 should be so construed.

6. The statutory provision under which jurisdiction is invoked:

Section 237(b), Judicial Code (Title 28, Sec. 344, U. S. Code).

7. Cases sustaining the jurisdiction of this Court:

St. L., I. M. & S. v. *Taylor*, 210 U. S. 281, 293, 28 S. Ct. 216, 52 L. Ed. 348;

Southern Railway v. *Crockett*, 234 U. S. 725, 730, 34 S. Ct. 897, 58 L. Ed. 1564;

St. L., I. M. & S. v. *McWhirter*, 229 U. S. 265, 275, 33 S. Ct. 84, 58 L. Ed. 192.

Statement of the Case.

A full statement of the case has been given in the petition and, in the interest of brevity, such statement is not repeated at this point.

Specification of Errors.

1. The court below erred in holding that the payment of the award of damages in question pursuant to orders of

the Interstate Commerce Commission entered in accordance with Section 16 of the Interstate Commerce Act, suit not having been brought to enforce such orders, was voluntary, made with full knowledge of all of the facts and that the amount paid could not be recovered back though such an award of damages and orders requiring the payment thereof had been set aside and vacated by the Commission.

2. The court below erred in holding that the payment of the award of damages in question was a voluntary payment and not a payment made under a mistake of fact.

3. The court below erred in holding that since in the opinion of the court the payment of the award of damages was voluntary and made with full knowledge of all of the facts and without fraud or duress, it would be inequitable to require respondent to refund the amount so paid because the status of respondent had changed since the payment of the award and could not be restored.

ARGUMENT.

I.

Payment to the Respondent of the Amount Sued for Was Not Voluntary and May be Recovered Back.

The Interstate Commerce Act requires a rail carrier to apply to the transportation service rendered by it reasonable rates and an assessment by such carrier of a rate unreasonably high is a violation of Section 13 of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 13), which provides that complaint may be made to the Commission because of any violation of the Act by a rail carrier and that the Commission shall hear and determine such complaint and make whatever proper findings and orders the facts and the law justify.

Section 16 (U. S. Code, Title 49, Sec. 16) of the Interstate Commerce Act provides that if after hearing on complaint

as provided in said Section 13, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of the Act for violation thereof the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

Paragraph 2 of said Section 16 provides that if a carrier does not comply with an order for the payment of money within the time limit of such order, the complainant may file in the United States District Court or any other State court of general jurisdiction having jurisdiction of the parties, a petition setting forth the causes for which he claims damages and the order of the Commission in the premises. Such suit, if in a United States court, shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated and except that the petitioner shall not be liable for costs in such court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee to be taxed and collected as part of the costs of the suit.

It is the view of petitioners that it is for the Federal courts to determine whether payments made in accordance with the provisions of such sections 13 and 16 of the Interstate Commerce Act of awards of damages pursuant to orders entered by the Commission are voluntary, unless suit shall have been brought to enforce the payment of such awards.

The determination of that question necessarily involves the construction to be given to such statutes.

The lower court held such a payment to be voluntary, stating:

> "The reparation award made by the Commission is not a judgment and the Commission could not have

enforced its payment. The Interstate Commerce Act provides that if a carrier does not pay the award within the time fixed in the Commission's order, the shipper may bring a suit against the carrier in a court of competent jurisdiction to recover damages because of the unreasonable charges exacted, and in such suit the order of the Commission shall be *prima facie* evidence of the facts stated in such order.

"The carrier could have refused to pay the award made by the Commission and awaited a suit by the shipper, in which suit it could have invoked every defense which the law afforded it. It did not take that course, but on the contrary paid the award in full before filing its motion for rehearing with the Commission. Such payment was voluntarily made with full knowledge of the facts and without fraud or duress. One who voluntarily pays money with full knowledge of all the facts in the case, and in the absence of fraud and duress, cannot recover it back."

The court below seemingly fails to give effect to the fact that had the respondent instituted suit to collect the award of damages in question, the carrier could not have again tried out the reasonableness of the rates assailed. The following cases declare this rule:

South Carolina Asparagus Assn. v. *Southern Railway,* 64 F. (2d) 419;

Mitchell Coal & Coke Co. v. *P. R. R. Co.,* 230 U. S. 247, 258;

United States v. *L. & N. R. Co.,* 235 U. S. 314.

In the *Mitchell Coal & Coke Company* case, *supra,* this Court said:

"Such orders, so far as they are administrative, are conclusive whether they relate to past or present rates and can be given general and uniform operation, since all shippers who have been or may be affected by the rate can take advantage of the ruling and avail themselves of the reparation order. They are quasi-judicial

and only *prima facie* correct in so far as they determine the fact and amount of damage—as to which, since it involves the payment of money and taking of property, the carrier is by paragraph 16 of the Act given its day in court and the right to a judicial hearing."

Also, in the case of *Virginian Railway Co.* v. *United States,* 272 U. S. 659, syllabus 4, to the opinion is as follows:

"A finding of the Commission that a rate is unreasonable, is binding on this Court, when supported by evidence, without regard to the soundness of the Commission's reasoning and conclusions or their consistency with findings in other proceedings."

A carrier can, when suit is brought to enforce an award of damages by the shipper, invoke as defenses (a) lack of testimony to support the finding and order of the Commission, (b) the fact and amount of damages, and (c) the question of confiscation, but if the finding of the Commission is supported by testimony that the shipper has been damaged and the rates fixed are not confiscatory, the carrier has no other recourse than to pay the award.

The court below finds that the carrier voluntarily paid the award in full before filing its motion for rehearing with the Commission and without hint or suggestion to respondent that the matter would be further litigated.

The facts are these as established by the record. The representative of respondent, B. V. Forrester, called upon the carrier at its headquarters in St. Louis before the expiration of the time in which a motion for rehearing could be filed with the Commission and demanded payment of the award of damages (R. 87). His exact testimony is as follows:

"I told him I wanted to discuss the reparation case with him; that there was an order for the reparation to be paid, and the time was fast approaching when this

must be paid and we had decided on some action. Of course, we had dropped the matter for seven years.

Q. Did you tell him what you were going to do if they would not pay?

A. Well, that was understood.

Q. What was the understanding?

A. They knew that we had only one recourse if they did not voluntarily pay the reparation." (R. 89.)

The foregoing constitutes on the part of the respondent a demand for payment under an implied threat to sue.

It is a fair inference from such testimony that inasmuch as the *Scott County Milling Company* case had been twice heard by the Commission and had culminated in awards of damages against the carriers, that it was the opinion of the respondent that it was safe in demanding this money, that it could rely upon what the Commission had done and that the carrier could be safely left to whatever course it elected to pursue.

There is no hint or suggestion in the record that the carrier in anywise intimated that it would not continue to pursue what remedies were available to it. Looking at the facts from a practical standpoint the carrier was in this position; the award of reparation was in a large amount, a substantial attorney's fee would have to be paid if suit were brought resulting in the enforcement of the award, together with costs, and the case having been tried twice before the Commission, the carrier could not assert that the orders entered by the Commission were not supported by testimony or that the respondent had not paid and borne the freight charges. The defense of confiscation is one that is rarely available in cases of awards of damages by the Commission. The respondent was threatening to sue, was demanding its money, and the carrier elected to pay, save the attorney's fees and costs, and rely upon having the award set aside through further resort to the Commis-

sion. Nothing the carrier said or did could properly give rise to an inference that the transaction was closed in so far as the carrier was concerned.

In view of the foregoing, the principles announced by this Court in the case of *Atchison, etc., R. Co.* v. *O'Connor*, 223 U. S. 280, are peculiarly applicable. That case was an action to recover taxes paid, and the Court said:

> "But even if the State is driven to an action, if at the same time the citizen is put at a serious disadvantage in the assertion of his legal, in this case his constitutional, rights, by defense in the suit, justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. *He is entitled to assert his supposed right on reasonably equal terms.*" (Emphasis supplied.)

This Court in the case of *St. L. & S. F. R. R.* v. *Spiller*, 275 U. S. 156, 159, in discussing the penalties the statute prescribed against a carrier that resisted payment of an award of reparation, said:

> "The purpose of Congress in making the provision concerning costs was to discourage harassing resistance by a carrier to a reparation order."

Looking at the facts surrounding the situation at the time the payment of the award in question was demanded by the respondent, it is obvious that the carrier was without a substantial defense and that the failure to pay would have resulted in the penalties of the statutes. The carrier was not in a position to assert his supposed rights upon reasonably equal terms.

II.

Payment of the Award in Question Was Made Under a Mistake of Fact Because the Question of Whether a Rate is Reasonable or Unreasonable is a Question of Fact.

The reasonableness or unreasonableness of a rate charged by a railroad company is a question of fact and not of law. The following cases establish that doctrine.

Illinois Central R. R. Co. v. *I. C. C.*, 206 U. S. 451, 51 L. Ed. 1128, 27 Sup. Ct. 700;

Northern Pacific Rwy. Co. v. *Solum*, 247 U. S. 478, 483;

Penn. R. R. Co. v. *International Coal Mining Co.*, 230 U. S. 184, 57 L. Ed. 1446.

In the *International Coal Mining Company* case, *supra*, this Court said:

> "For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts."

The court below in considering this contention stated

> "A mistaken belief of the parties that the finding of the Commission was either right or wrong would not be a mutual mistake of fact. A mutual mistake of fact as that term is used in the law, means in this case a mutual mistake as to the existence or non-existence of facts determinative of the reasonableness or unreasonableness of the rate."

The foregoing is simply a holding that a mutual mistake as to the existence or non-existence of facts means lack of knowledge of what the testimony is or could be in a proceeding before the Commission.

The very purpose of that testimony is to enable the Commission to determine as a fact whether the rates assailed are reasonable or unreasonable. In so far as this proceeding is concerned, the Commission did determine that fact, to wit, that the rates were unreasonable. All of the parties to the controversy acted upon that finding. After such action had been taken the Commission was of the opinion that its finding of fact as to the reasonableness of the rates was erroneous and set aside such finding. Petitioners contend that payment of the award of damages by the carrier was because of an erroneous finding by the Commission of a fact, which finding the Commission thereafter set aside, and that a payment made under such circumstances is a payment made under a mutual mistake of fact.

III.

The Amount Sued for Having Been Paid Under a Mutual Mistake of Fact Growing Out of Findings and Orders of the Commission Pursuant to the Provisions of Sections 13 and 16 of the Interstate Commerce Act, Respondent Has Received Money Which in Equity and in Good Conscience It Should Pay to Petitioners.

Whether or not it would be equitable for respondent to retain the money paid to it in satisfaction of the award of reparation in question depends upon the construction placed upon the statute pursuant to the provisions of which the money was paid.

It is the view of petitioners that not only was such payment involuntary, but was also under a mutual mistake of fact and that a proper construction of the statute in question is that money paid in satisfaction of an award of damages and orders to pay such damages entered thereunder are paid under a mutual mistake of fact if such awards and orders are thereafter set aside by the Commission as

having been erroneous. The court below held that it would be inequitable to compel respondent to return the money because, in the opinion of the court, the payment of the award of reparation was voluntary and that the respondent was caused to believe that the litigation was ended and hence changed its status. We have heretofore discussed this question of inducing the respondent to believe the litigation was ended and we shall make no further reference to that feature. The attention of the court, however, is called to the case of *Bull* v. *United States*, 295 U. S. 247. That case involved a proceeding for the collection of an estate tax, the United States through a mistake having taken more than it was entitled to. This Court held that the retention of the money was against morality and conscience. But since claim for refund or credit was not presented or action instituted for restoration within the period fixed by the Statute of Limitations, if nothing further had occurred, Congressional action would have been the sole avenue of redress. The following principle was declared by this Court in that case:

> "An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to refund. The form of the indebtedness or the mode in which it was incurred is immaterial. In these cases (cited in the opinion) and many others that might be cited the rules of law applicable to individuals were applied to the United States."

The money here sued for, while taken without any element of fraud, unquestionably belongs to petitioners, and the unjust retention of such money by the respondent unquestionably amounts in law to fraud on the rights of petitioners, and it will be observed that this Court in applying the principles here contended for asserted that if the respondent is obliged by natural justice and equity to refund,

the form of the indebtedness or the mode in which it occurred is immaterial.

The money sued for was paid in compliance with orders entered by the Interstate Commerce Commission in accordance with the provisions of a Federal statute to which we have heretofore particularly referred. In the opinion of petitioners a fair and correct interpretation of that statute is that payments made pursuant to orders thereafter set aside may be recovered and that it would be inequitable to permit those receiving the money to retain that which is unquestionably the property of others.

IV.

A Holding That Petitioners are Entitled to Recover the Money Sued for Would be in Accord With the Purposes of the Interstate Commerce Act.

The Commission in its reports dated July 12, 1926, and July 10, 1928, found that respondent had been assessed rates unreasonable for the past and that respondent was entitled to an award of damages, and by orders entered February 11, and March 11, 1929, directed the payment of such award, which was done. In its report dated July 3, 1933, the Commission found that its previous findings were erroneous, that respondent had not been subjected to the payment of unreasonable rates for the past and was not entitled to an award of damages. In accordance with such last named findings all previous reports and orders were vacated.

The situation left in effect by reason of the report and orders of the Commission dated July 3, 1933, was that the respondent had paid for the past reasonable rates the same as had other shippers similarly situated. Respondent, however, had not only been assessed reasonable rates, but through erroneous orders of the Commission had been

paid the sum of $23,994.33. This money, the Supreme Court of Missouri holds respondent is entitled to retain because the carrier did not require as condition precedent suit to be brought to recover such amount, interposing what might fairly be termed paper defenses and subject itself to the penalties of the statute.

In the opinion of petitioners, in construing section 16 of the Interstate Commerce Act consideration should be given to the general purpose of the entire Act.

In the case of *Louisville & N. R. Co.* v. *Mottley,* 219 U. S. 467, 55 L. Ed. 297, this Court held that the purpose of Congress in passing the Interstate Commerce Act was to cut up by the roots every form of discrimination, favoritism and inequality.

The purpose of such Act cannot be effectuated by permitting a shipper that has been charged reasonable rates to receive in addition a large sum of money because of an erroneous decision thereafter set aside of the Commission.

Conclusion.

It is, therefore, respectfully submitted that this cause is one calling for the exercise by this Court of its supervisory powers in order that the errors of the lower court be corrected and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Missouri and finally reverse it.

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